

In the Supreme Court of the United States

OCTOBER TERM, 1922.

UNITED STATES OF AMERICA, APPELLEE,	} No. 231.
v.	
BERNARD L. MORAN.	

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

Bernard L. Moran was a retired master-at-arms in the United States Coast Guard on the date of the declaration of war with Germany, April 6, 1917, with a total active service as master-at-arms of more than three (3) years. On August 1, 1917, claimant was recalled to active duty and continued on active duty until December 31, 1918, and later (R. 4).

Under the Act of January 28, 1915 (38 Stat. 800), the Coast Guard became subject to the jurisdiction and orders of the Secretary of the Navy, which act provides as follows:

That there shall be established in lieu of the existing Revenue Cutter Service and the Life-Saving Service, to be composed of those two

existing organizations, with the existing offices and positions and the incumbent officers and men of those two services, the Coast Guard, which shall constitute a part of the military forces of the United States and *which shall operate under the Treasury Department in time of peace and operate as a part of the Navy, subject to the orders, of the Secretary of the Navy, in time of war*, or when the President shall so direct: When subject to the Secretary of the Navy in time of war the expense of the Coast Guard shall be paid by the Navy Department: *Provided*, That no provision of this Act shall be construed as giving any officer of either the Coast Guard or the Navy, military or other control at any time over any vessel, officer or man of the other service except by the direction of the President. (Italics supplied.)

The Act of May 22, 1917, entitled "An Act to temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps, and for other purposes" (40 Stat. 84), provides:

Section 13. Nothing contained in this act shall operate to reduce the rank, pay or allowance that would have been received by any person in the Navy, Marine Corps, or Coast Guard, except for the passage of this Act.

Section. 15. That commencing June first, nineteen hundred and seventeen, and continuing until not later than six months after the termination of the present war, all enlisted men of the Navy of the United States in active service whose base pay does not exceed

\$21 per month shall receive an increase of \$15 per month; those whose pay is over \$21 and does not exceed \$24 per month, an increase of \$12 per month; those whose pay is over \$24 and less than \$45 per month, an increase of \$8 per month; and those whose pay is \$45 or more per month, an increase of \$6 per month

* * * *Provided*, That during the continuance of the present war, warrant officers, petty officers and enlisted men of the United States Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy.

Pursuant to the above Section 15 the Commandant of the Coast Guard, on June 5, 1917, submitted to the Chief of the Bureau of Navigation, Navy Department, a comparative table of grades and ratings (R. 4), and in said table set forth Chief Master-at-Arms in the Navy as the corresponding grade and rating to the Master-at-Arms in the Coast Guard (R. 5).

On October 10, 1917, the Secretary of the Navy issued General Order No. 329 (R. 5) in which was set forth a table of corresponding grades and ratings of the Coast Guard and Navy in which master-at-arms in the Coast Guard corresponded to master-at-arms, first class, in the Navy, (R. 5).

Under this General Order No. 329 claimant, in accordance with the provision of Section 15, Act of May 22, 1917, was paid at the rate previously had in the Coast Guard, since a master-at-arms, first class,

in the Navy would receive less than a master-at-arms in the Coast Guard, but such smaller payment was prevented by Section 13 above. The claimant now sues for the difference between the amount paid him as master-at-arms, first class, and the amount he would have received if he had been rated as Chief Master-at-Arms in the Navy.

QUESTION INVOLVED.

The real question involved in this case is whether the determination of the Secretary of the Navy as to the corresponding grades and ratings of the Coast Guard and the Navy was an administrative act or a usurpation of legislative power.

ARGUMENT.

The question of law in the present case is the same as that involved in the case of *United States of America, Appellee, v. Will J. Allen, No. 232*, and the brief presented in the Allen case is submitted on behalf of the Government in this case.

JAMES M. BECK,
Solicitor General.

A. T. SEYMOUR,
Assistant to the Attorney General.

FEBRUARY, 1923.

